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SEP 4 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

(412) 338-1111

September 4, 1992

Donna R. Searcy, Secretary
Federal Communications Commission
Room 222, 1919 M. Street, N.W.
Washington, DC 20554

RE: Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Lakewood, New York and Clarendon, Pennsylvania)
MM Docket No. 92-173
RM-8033

Dear Ms. Searcy:

Transmitted herewith for filing on behalf of Robert M. Stevens are the original and four copies of his Comments In Support of the Proposed Rule Making and in the above referenced matter.

If any further information is required, please communicate directly with the undersigned at the Pittsburgh address shown above.

Very truly yours,


Frederick A. Polner

FAP/cpc
#11660-2

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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SEP 4 1992

In the Matter of:

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Lakewood, New York, and
Clarendon, Pennsylvania)

RM-8033

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: Chief, Allocations Branch, Policy and Rules Division

COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING

ROBERT STEVENS ("Petitioner") by and through his undersigned counsel, FREDERICK A. POLNER, ESQUIRE and ROTHMAN GORDON FOREMAN & GROUDINE, P.C., hereby respectfully submits his Comments in Support of Notice of Proposed Rule Making in the captioned proceeding. It is respectfully requested herein that, good cause having been shown therefor, the Chief, Allocations Branch of the Federal Communications Commission ("Commission") grant said Notice of Proposed Rule Making (DA 92-1001, released August 18, 1992, hereafter the "NPRM"), and adopt the allotment plan proposed therein. In support whereof, it is averred that:

1. In its Petition for Rule Making in this proceeding (which is attached hereto as Exhibit "A" and which the Petitioner incorporates herein by reference), the Petitioner requests allotment of Channel 295B1 to Lakewood, New York as its first local aural transmission service, and substitution of Channel 282A for

Channel 295A at Clarendon, Pennsylvania. The NPRM proposes adoption of this plan.

2. The amendment to the FM Table of Allotments requested by the Petitioner and proposed in the NPRM is as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Lakewood, New York	--	295B1
Clarendon, Pennsylvania	295A	282A

3. As further set forth in the Petitioner's Petition for Rule Making, the allocation of Channel 295B1 to Lakewood will serve the public interest by providing a first local aural transmission service to Lakewood, while substitution of Channel 282A for Channel 295A at Clarendon, Pennsylvania will offset any potential loss of service caused by deleting Channel 295A at Clarendon. Granting of the NPRM, and adoption of the allotment plan proposed therein, therefore, will yield an overall allotment plan superior under the Commission's allotment priorities to the presently existing allotment plan.

4. It is respectfully submitted, therefore, that granting the NPRM and adoption of the allotment plan proposed therein is consistent with the public interest, convenience and necessity.

5. If Channel 295B1 is allocated to Lakewood, New York as requested herein, Petitioner reaffirms hereby his commitment to apply for a construction permit for this allocation, and promptly to construct the new FM broadcast station in the event his said application for construction permit is granted.

WHEREFORE, good cause having been shown, Petitioner respectfully requests that the NPRM be granted; that the Commission's rules be amended to allocate Channel 295B1 to Lakewood, New York; and, that Channel 282A be substituted for Channel 295A at Clarendon, Pennsylvania.

Respectfully submitted,

ROBERT STEVENS, PETITIONER

By: 

Frederick A. Pomer, Esquire

ROTHMAN GORDON FOREMAN
& GROUDINE, P.C.
Third Floor, Grant Building
Pittsburgh, PA 15219
(412) 338-1100

His Attorney

September 4, 1992

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments In Support of Notice of Proposed Rule Making has been served upon the following parties of record, via U.S. mail, postage prepaid, this 3rd day of Sept., 1992:

Anne Thomas Paxson, Esquire
Borsari & Paxson
2033 M Street, N.W.
Washington, D.C. 20036

(attorneys for Cary H. and Betty F. Simpson, applicants for
Channel 295A at Clarendon, PA)


Christine Craig

EXHIBIT "A"

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of:)	
)	
Amendment of Section 73.202(b))	
Table of Assignments)	RM
FM Broadcast Stations)	
(Lakewood, New York))	

TO: Chief, Allocations Branch, Policy and Rules Division

PETITION FOR RULEMAKING

AND NOW, comes ROBERT STEVENS (Petitioner), by and through his attorneys, Frederick A. Polner, Esquire and ROTHMAN GORDON FOREMAN & GROUDINE, P.C., pursuant to the provisions of Section 1.401(d) of the Rules of the Federal Communications Commission and hereby makes this Petition, respectfully requesting the Commission to amend its FM Table of Assignments as set forth at Section 73.202(b) of the Rules by allocating Channel 295B1 to Lakewood, New York. This would be the first FM channel assigned to that community.

Petitioner hereby represents that in the event Channel 295B1 is assigned to Lakewood, New York, he will file or cause to be filed an application for authority to construct and operate an FM broadcast station on that assigned frequency.

In order to accommodate the allocation of Channel 295B1 to Lakewood, New York, it is requested, as well, that Channel 282A

be substituted for Channel 295A at Clarendon, Pennsylvania.¹ It is respectfully submitted, as more fully set forth herein, that the proposed allocation of new service to Lakewood, New York and channel substitution at Clarendon, Pennsylvania will serve the public interest.

I. GENERAL INFORMATION

Lakewood, New York is an incorporated municipality located in the southern portion of Chautauqua County, New York. Chautauqua County is located in the extreme southwestern portion of the state, bordering the state of Pennsylvania to the west and south and bordering Lake Erie (Canada) to the north. Its surface elevation ranges from 573 feet at Lake Erie to 2,190 feet at the highest point in southern Chautauqua County. Located within Chautauqua County, Chautauqua Lake stretches for 21 miles in a northwesterly-southeasterly direction through the south central portion of the county. The northern municipal boundary of Lakewood stretches nearly three miles along the southern shore of the Chautauqua Lake. The total area of the municipality and the county are 1.9 and 1,069 square miles, respectfully.

¹ An application to construct a new FM broadcast station on Channel 295A at Clarendon, Pennsylvania (BPH-920306MN) is pending.

II. POPULATION AND DEMOGRAPHICS

According to the 1990 census, the total population for Lakewood is 3564 persons, with the County of Chautauqua having a total population of 141,895 persons. According to the 1990 census, the number of minority persons in Lakewood includes 14 Black, 4 American Indian, 18 Asian Indian, and 19 Hispanic. In the County, the minority population includes 2,405 Black, 556 American Indian, 1 Alaskan native, 134 Asian Indian, and 4,055 Hispanic. Additionally, women, youth, and elderly in Lakewood respectively were 1,895, 850, and 584.

III. GOVERNMENT

Lakewood is an incorporated village within the State of New York and operates with a board of trustees - mayor plan of administration, the community which as originally part of Busti Township was incorporated into its own municipality, the Village of Lakewood, in 1893. The governing body is comprised of a four-person Board of Trustees, and a Mayor, each elected for a term of four years. The community's Municipal Building houses the Lakewood Village Business Office, including the Board of Trustees' public meeting room, the Mayor's Office, the Village Clerk, the Lakewood Police Department, Lakewood Fire Department, and local District Court offices.

In addition to the Lakewood Municipal Building, the Village also maintains a separate maintenance building which houses the Lakewood Road Department, and the Lakewood Water Department.

IV. ECONOMIC PROFILE

The economy of Lakewood is based upon retailing, tourism, and manufacturing. Within the municipality there are approximately 170 businesses. The following establishments are some of the business located in Lakewood: Yorktown Industries (a division of Matco Tools Corporation), Falconer Die Casting, Ecko Tool and Die, Swanson Chemical Labs, Lakewood Furniture Galleries, Community Chrysler-Plymouth, Betty Dixon Candies, Key Bank of New York, Lakewood Drug Store, Wickmark Electric, Trader Jacks, Lakewood Liquor Store, Davisons Restaurant, The Green Farm and Pappagallo, Pearsons Stained Glass, Perkins Pancake and Steakhouse, Village Hardware Company, Gravely Tractor, First National Bank, Valu Home Center, and approximately 150 other businesses, including nearly 60 that are located at the Chautauqua Mall within the municipal boundaries of the Village of Lakewood.

V. POLICE AND FIRE PROTECTION

Police protection in Lakewood is provided by the Lakewood Police Department, The Police Department headquarters is located in the Lakewood Municipal Building. The Lakewood Police Department

employs nine full-time officers, four part-time officers, a police secretary, and a part-time animal control officer. The Department maintains a complement of six police vehicles, used for various purposes, including patrol, investigation details, and traffic control. Additionally, Lakewood is paid by Busti Township, under a police service contract, to provide police coverage to the neighboring municipality.

Fire protection is provided to the citizens of Lakewood by the Lakewood Volunteer Fire Department. The Fire Department is located in a building adjoining the Lakewood Municipal Building. The Lakewood Fire Department maintains a complement of six vehicles including three pumpers, a ladder truck, an ambulance rescue unit, a heavy rescue unit, and a supply of necessary accessories.

VI. STREET DEPARTMENT

Lakewood residents can count on well maintained community streets. While the New York State Department of Transportation maintains State Route 394, a heavily traveled highway that runs through Lakewood, the Village maintains approximately 26 miles of road, which includes over 80 separate streets located within the municipality. To maintain the various community roadways, the Village employs eight full-time Street Department personnel. The Village of Lakewood also owns and operates its own Street Department equipment.

VII. SCHOOL SYSTEM

Lakewood is served by the Southwestern Central School District. The District provides schooling for children residing in the Village of Lakewood, the Village of Celeron, the Township of Busti, and the southwestern part of the Township of Ellicot. One of the schools serving the Consolidated District, located in Lakewood Village, is Lakewood Elementary School.

VIII. POST OFFICE

Lakewood has its own Post Office located in the municipality at 62 Chautauqua Avenue, Lakewood, New York, Zip Code 14750.

IX. RELIGIOUS INSTITUTIONS

There are four religious institutions located in Lakewood serving the needs of its residents: (1) Lakewood Baptist, (2) Gloria Dei Lutheran, (3) Lakewood United Methodist, and (4) Sacred Heart Roman Catholic.

X. CULTURAL INSTITUTIONS

The village of Lakewood is well served by the Lakewood Memorial Library, which operates six days a week, and is staffed by full-time and part-time employees.

XI. CIVIC/FRATERNAL/CHARITABLE GROUPS AND ORGANIZATIONS

Many of Lakewood's citizens are involved in civic, fraternal, and charitable groups and organizations. These groups and organizations include: The Lakewood Kiwanis Club, the Lakewood Rotary Club, The Lakewood Woman's Club, The Lakewood American Legion Post 1286, The Lakewood Rod N Gun Club, The Lakewood Area Chamber of Commerce, and The Lakewood Fireman's Club.

XII. RECREATION FACILITIES

Lakewood recreational facilities provided by the Village include: The Lakewood Beach Park, Lakewood Veterans Park, Lagreage Field, and tennis courts. The Village employs a staff of seven life guards to protect citizens using lake facilities at Lakewood Beach Park during the summer swim season.

XIII. UTILITIES

The Village of Lakewood provides water to the residents and businesses located in the municipality through its own Water Department. The Lakewood Water Department, with three full-time employees, maintains its own equipment including: two utility trucks, two dump trucks, a backhoe tractor, and a complement of necessary tools and accessories used to maintain the village water lines.

XIV. ENGINEERING SHOWING

Channel 295A currently is allocated to Clarendon, Pennsylvania. Petitioner proposes the allocation of Channel 295B1 to Lakewood, New York, and the substitution of Channel 282A for Channel 295A at Clarendon, Pennsylvania.

Attached hereto as Exhibit No. "EE" and incorporated herein by reference, is the Engineering Statement In Support of Petition For Rulemaking, prepared on behalf of Petitioner by Mullaney Engineering, Inc. (the "Technical Statement"). As demonstrated in the Technical Statement, Channel 295B1 can be allocated to Lakewood, New York in a manner that complies with the Commission's mileage separation requirements, and creates a preferred allotment plan under the Commission's allotment priorities.

As previously noted, there presently is pending an application to construct a new broadcast station on Channel 295A at Clarendon, Pennsylvania (BPH-920306MN). As of the date of filing of the within Petition for Rulemaking, the aforementioned application has not been granted.² It is Commission policy that rulemaking proposals that provide new service benefits generally are preferred over an application which represents a preference for a particular site. See Andalusia, Alabama, 49 FR 32201 (August 13, 1984); Las Vegas, Nevada, 51 FR 9453 (March 19, 1986). Further, as may be seen from the Technical Statement, the proposed channel substitution at Clarendon, Pennsylvania can be made from the same site proposed in the application and meets the Commission's spacing and other requirements.

XV. PUBLIC INTEREST

The allocation of Channel 295B1 to Lakewood, New York would bring a much needed first local service to that community and its surrounding area. Substitution of Channel 282A for Channel 295A at Clarendon, Pennsylvania would serve to offset any potential loss of service otherwise occasioned by deleting Channel 295A at Clarendon. Thus, grant of the within Petition would yield an

² Petitioner is not required to offer and the applicant is not entitled to receive any reimbursement in connection with the proposed channel substitution. Pacific Grove and Soledad, California, 5 FCC Rcd. 6700 (1990); Bayou Vista and Franklin, Louisiana, 34 R.R.2d 1540, 1541-42 (1975).

overall allotment plan superior under the Commission's allotment priorities to the presently existing allotment.

Accordingly, therefore, Petitioner respectfully requests that the Commission issue a Notice of Proposed Rule Making to amend Section 73.202(b) of the Rules as follows:

73.202 TABLE OF ALLOTMENTS

(b) Table of FM Allotments

<u>City</u>	<u>CHANNEL NO.</u>	
	<u>Present</u>	<u>Proposed</u>
Clarendon, Pennsylvania	295A	282A
Lakewood, New York	—	295B1

Respectfully submitted,

ROBERT STEVENS

By 

Frederick A. Palmer, Esquire
Richard K. Olson, Jr., Esquire

ROTHMAN GORDON FOREMAN
& GROUDINE, P.C.
Third Floor, Grant Building
Pittsburgh, PA 15219
(412) 338-1100

His Attorneys

June 17, 1992

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within
Petition for Rulemaking was served upon the following individuals
via First-Class Mail, postage prepaid, this 19th day of June
 , 1992:

Anne Thomas Paxson, Esquire
BORSARI & PAXSON
2033 M Street, N.W.
Washington, D.C. 20036

(attorneys for Cary H. and Betty F. Simpson, applicants for
Channel 295A at Clarendon, PA)

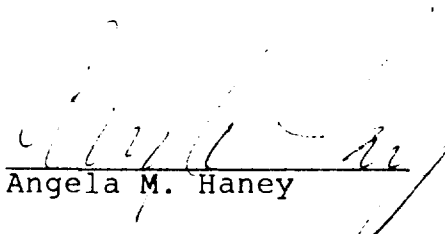

Angela M. Haney

EXHIBIT NO. EE

JOHN J. MULLANEY
JOHN H. MULLANEY, P.E.

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

301 921-0115

ENGINEERING EXHIBIT EE:

ROBERT STEVENS

**ALLOTMENT OF CHANNEL 295B1 AT LAKEWOOD, NY
SUBSTITUTION OF CHANNEL 282A FOR 295A
AT CLARENDON, PA**

JUNE 8, 1992

**ENGINEERING STATEMENT IN SUPPORT OF A
PETITION FOR RULE MAKING
TO AMEND
THE FM TABLE OF ASSIGNMENTS**

MULLANEY ENGINEERING, INC.

ENGINEERING EXHIBIT EE:

ROBERT STEVENS

**ALLOTMENT OF CHANNEL 295B1 AT LAKEWOOD, NY
SUBSTITUTION OF CHANNEL 282A FOR 295A
AT CLARENDON, PA**

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from the Requested Reference Coordinates.
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5. Figure 3, Channel Allocation Study for Ch. 282A
from the Pending Application Site.

MULLANEY ENGINEERING, INC.

DECLARATION

I, John J. Mullaney, declare and state that I am a graduate electrical engineer and my qualifications are known to the Federal Communications Commission, and that I am an engineer in the firm of Mullaney Engineering, Inc., and that firm has been retained by Robert Stevens to prepare an engineering statement in support of a Petition to Amend the FM Table of Assignments.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.


John J. Mullaney

Executed on the 8th day of June 1992.

ENGINEERING EXHIBIT EE:

ROBERT STEVENS

**ALLOTMENT OF CHANNEL 295B1 AT LAKEWOOD, NY
SUBSTITUTION OF CHANNEL 282A FOR 295A
AT CLARENDON, PA**

NARRATIVE STATEMENT:

I. GENERAL:

This engineering statement has been prepared on behalf of Robert Stevens. The purpose of this statement is to support a request that the FM Table of Assignments be amended to substitute Ch. 282A for 295A at Clarendon, PA, in order to permit the allotment of Ch. 295B1 to Lakewood, NY.

Ch. 295B1 would be the First Local Service to be licensed to Lakewood, NY (Chautauqua County).

It should be noted that the area in question is within 290 kilometers (180 miles) of a U.S. Border and, therefore, foreign concurrence (Canadian) is required.

II. ENGINEERING DISCUSSION:

A. Proposed Site - Lakewood, NY:

Because of required separations and FAA constraints, Stevens requests that this site be used as a special reference point for the allocation.

The following geographic coordinates are for a site which is 14.5 kilometers (9 miles) southeast of Lakewood, NY:

Latitude: 42° 00' 00"
Longitude: 79° 13' 00"

B. Channel Allocation Study - Lakewood, NY:

Figure 1 is a Channel Allocation Study from the Special Reference Point proposed herein which indicates the required separation in kilometers to all known Licenses, Construction Permits, Open Allocations, pending Applications, and pending Rule Makings. From this study it can be determined that the proposed special reference point exceeds all of the minimum separations except the requirement to be 143 KM from 295A at Clarendon, PA. There are no known Canadian problems associated with this allocation.

Figure 2 is a map which illustrates these restrictions and the resulting area in which the tower site must be located. It also clearly demonstrates that the proposed site will provide an unobstructed view of the City of License, Lakewood, NY and is located close enough to serve the entire Community with the required 3.16 mV/M contour.

No other B1 channel is available for allotment to Lakewood, NY.

C. Channel Allocation Study - Clarendon - PA:

Figure 3 is a Channel Allocation Study from the pending application (920306MA) by Cary H. & Betty F.

Simpson for 295A at Clarendon, PA. From this study it can be determined that the proposed special reference point exceeds all of the minimum separations. There are no known Canadian problems associated with this allocation.

Figure 2 shows that the site proposed by Simpson is located on a hill top which is 7.5 KM northwest of Clarendon. The proposed site provides an unobstructed view of the City of License, Clarendon, PA and is located close enough to serve the entire Community with the required 3.16 mV/M contour.

D. Public Interest Showing:

The proposed substitution of 282A for 295A at Clarendon will permit the allotment of 295B1 to Lakewood, NY. Assuming maximum Class B1 facilities the population served within the 60 dBu contour is 144,500 persons (1990 census). Since an alternate channel has been found for Clarendon no community will lose service.

Based upon the above reasons Robert Stevens believes that the requested channel allotment & substitution is in the Public Interest and should therefore be granted by the Commission.

Robert Stevens
Allotment of 295B1 at Lakewood, NY

MULLANEY ENGINEERING, INC.

III. SUMMARY:

Robert Stevens requests that the FM Table of Assignments be amended to substitute Ch. 282A for 295A at Clarendon, PA, in order to permit the allotment of Ch. 295B1 to Lakewood, NY.

City	Present	Proposed
Clarendon, PA	295A	282A
Lakewood, NY	---	295B1

June 8, 1992.


John J. Mullaney